

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
THIRD SPECIAL SESSION
LEGISLATIVE BILL 1
FINAL READING

Introduced by Speaker Bromm, 23; Brashear, 4;
at the request of the Governor

Read first time November 7, 2002

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-303, 29-1602, 29-1603, 29-2027, 29-2519, 29-2520,
3 29-2521, 29-2522, 29-2524, and 83-1,105.01, Reissue
4 Revised Statutes of Nebraska, and sections 28-105,
5 28-105.01, 29-2004, 29-2204, 29-2261, and 29-2523,
6 Revised Statutes Supplement, 2002; to change provisions
7 relating to Class I and Class IA felonies; to state
8 intent; to harmonize provisions; to provide severability;
9 to repeal the original sections; and to declare an
10 emergency.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Supplement,
2 2002, is amended to read:

3 28-105. (1) For purposes of the Nebraska Criminal Code
4 and any statute passed by the Legislature after the date of passage
5 of the code, felonies are divided into nine classes which are
6 distinguished from one another by the following penalties which are
7 authorized upon conviction:

8 Class I felony Death

9 ~~Class IA felony Life imprisonment~~

10 Class IA felony Life imprisonment without parole

11 Class IB felony Maximum -- life imprisonment

12 Minimum -- twenty years imprisonment

13 Class IC felony Maximum -- fifty years imprisonment

14 Mandatory minimum -- five years imprisonment

15 Class ID felony Maximum -- fifty years imprisonment

16 Mandatory minimum -- three years

17 imprisonment

18 Class II felony Maximum -- fifty years imprisonment

19 Minimum -- one year imprisonment

20 Class III felony Maximum -- twenty years imprisonment, or

21 twenty-five thousand dollars fine, or both

22 Minimum -- one year imprisonment

23 Class IIIA felony ... Maximum -- five years imprisonment, or

24 ten thousand dollars fine, or both

25 Minimum -- none

26 Class IV felony Maximum -- five years imprisonment, or ten

27 thousand dollars fine, or both

28 Minimum -- none

1 (2) All sentences of imprisonment for Class IA, IB, IC,
2 ID, II, and III felonies and sentences of one year or more for
3 Class IIIA and IV felonies shall be served in institutions under
4 the jurisdiction of the Department of Correctional Services.
5 Sentences of less than one year shall be served in the county jail
6 except as provided in this subsection. If the department certifies
7 that it has programs and facilities available for persons sentenced
8 to terms of less than one year, the court may order that any
9 sentence of six months or more be served in any institution under
10 the jurisdiction of the department. Any such certification shall
11 be given by the department to the State Court Administrator, who
12 shall forward copies thereof to each judge having jurisdiction to
13 sentence in felony cases.

14 (3) Nothing in this section shall limit the authority
15 granted in sections 29-2221 and 29-2222 to increase sentences for
16 habitual criminals.

17 (4) A person convicted of a felony for which a mandatory
18 minimum sentence is prescribed shall not be eligible for probation.

19 Sec. 2. Section 28-105.01, Revised Statutes Supplement,
20 2002, is amended to read:

21 28-105.01. (1) Notwithstanding any other provision of
22 law, the death penalty shall not be imposed upon any person who was
23 under the age of eighteen years at the time of the commission of
24 the crime.

25 (2) Notwithstanding any other provision of law, the death
26 penalty shall not be imposed upon any person with mental
27 retardation.

28 (3) As used in subsection (2) of this section, mental

1 retardation means significantly subaverage general intellectual
2 functioning existing concurrently with deficits in adaptive
3 behavior. An intelligence quotient of seventy or below on a
4 reliably administered intelligence quotient test shall be
5 presumptive evidence of mental retardation.

6 (4) ~~Within one hundred twenty days after July 15, 1998, a~~
7 ~~convicted person sentenced to the penalty of death prior to July~~
8 ~~15, 1998, may bring a verified motion in the district court which~~
9 ~~imposed such sentence requesting a ruling that the penalty of death~~
10 ~~be precluded under subsection (2) of this section and that the~~
11 ~~sentence be vacated. The court shall cause notice of each such~~
12 ~~request to be served on the county attorney, grant a prompt hearing~~
13 ~~on the request, and determine the issues and make findings of fact~~
14 ~~with respect to the request. If the court finds by a preponderance~~
15 ~~of the evidence that the convicted person is a person with mental~~
16 ~~retardation, the sentence of death shall be vacated and a sentence~~
17 ~~of life imprisonment imposed.~~

18 ~~(5) For any convicted person who may be sentenced to the~~
19 ~~penalty of death on or after July 15, 1998~~ If (a) a jury renders a
20 verdict finding the existence of one or more aggravating
21 circumstances as provided in section 29-2520 or (b)(i) the
22 information contains a notice of aggravation as provided in section
23 29-1603 and (ii) the defendant waives his or her right to a jury
24 determination of the alleged aggravating circumstances, the court
25 shall hold a hearing prior to any sentencing ~~hearing~~ determination
26 proceeding as provided in section 29-2521 upon a verified motion of
27 the defense requesting a ruling that the penalty of death be
28 precluded under subsection (2) of this section. If the court

1 finds, by a preponderance of the evidence, that the defendant is a
2 person with mental retardation, the death sentence shall not be
3 imposed. A ruling by the court that the evidence of diminished
4 intelligence introduced by the defendant does not preclude the
5 death penalty under subsection (2) of this section shall not
6 restrict the defendant's opportunity to introduce such evidence at
7 the sentencing ~~hearing~~ determination proceeding as provided in
8 section 29-2521 or to argue that such evidence should be given
9 mitigating significance.

10 Sec. 3. Section 28-303, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-303. A person commits murder in the first degree if
13 he or she kills another person (1) purposely and with deliberate
14 and premeditated malice, or (2) in the perpetration of or attempt
15 to perpetrate any sexual assault in the first degree, arson,
16 robbery, kidnapping, hijacking of any public or private means of
17 transportation, or burglary, or (3) by administering poison or
18 causing the same to be done; or if by willful and corrupt perjury
19 or subornation of the same he or she purposely procures the
20 conviction and execution of any innocent person. The determination
21 of whether murder in the first degree shall be punished as a Class
22 I or Class IA felony shall be made pursuant to sections ~~29-2520~~
23 29-2519 to 29-2524 and section 13 of this act.

24 Sec. 4. Section 29-1602, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 29-1602. All informations shall be filed in the court
27 having jurisdiction of the offense specified therein, by the
28 prosecuting attorney of the proper county as informant. ~~He~~ The

1 prosecuting attorney shall subscribe his or her name thereto and
2 endorse thereon the names of the witnesses known to him or her at
3 the time of filing. After the information has been filed, the
4 prosecuting attorney the same, and at such time thereafter, as the
5 court or a judge thereof in vacation, in its or his discretion, may
6 prescribe, he shall endorse thereon on the information the names of
7 such other witnesses as shall then be known to him or her as the
8 court in its discretion may prescribe, except that if a notice of
9 aggravation is contained in the information as provided in section
10 29-1603, the prosecuting attorney may endorse additional witnesses
11 at any time up to and including the thirtieth day prior to the
12 trial of guilt.

13 Sec. 5. Section 29-1603, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-1603. (1) All informations shall be verified by the
16 oath of the county attorney, complainant, or some other person, and
17 the offenses charged therein shall be stated with the same fullness
18 and precision in matters of substance as is required in indictments
19 in like cases.

20 (2) (a) Any information charging a violation of section
21 28-303 and in which the death penalty is sought shall contain a
22 notice of aggravation which alleges one or more aggravating
23 circumstances, as such aggravating circumstances are provided in
24 section 29-2523. The notice of aggravation shall be filed as
25 provided in section 29-1602. It shall constitute sufficient notice
26 to describe the alleged aggravating circumstances in the language
27 provided in section 29-2523.

28 (b) The state shall be permitted to add to or amend a

1 notice of aggravation at any time up to and including the thirtieth
2 day prior to the trial of guilt.

3 (c) The existence or contents of a notice of aggravation
4 shall not be disclosed to the jury until after the verdict is
5 rendered in the trial of guilt.

6 (3) Different offenses and different degrees of the same
7 offense may be joined in one information, in all cases ~~where~~ in
8 which the same might by different counts be joined in one
9 indictment; and in all cases a defendant or defendants shall have
10 the same right, as to proceedings therein, as ~~he or they~~ the
11 defendant or defendants would have if prosecuted for the same
12 offense upon indictment.

13 Sec. 6. Section 29-2004, Revised Statutes Supplement,
14 2002, is amended to read:

15 29-2004. (1) All parties may stipulate that the jury may
16 be selected up to thirty-one days prior to the date of trial. The
17 stipulation must be unanimous among all parties and evidenced by a
18 joint stipulation to the county court.

19 (2) In all cases, except as may be otherwise expressly
20 provided, the accused shall be tried by a jury drawn, summoned, and
21 impaneled according to provisions of the code of civil procedure,
22 except that whenever in the opinion of the court the trial is
23 likely to be a protracted one, the court may, immediately after the
24 jury is impaneled and sworn, direct the calling of one or two
25 additional jurors, to be known as alternate jurors. Such jurors
26 shall be drawn from the same source and in the same manner, and
27 have the same qualifications as regular jurors, and be subject to
28 examination and challenge as such jurors, except that each party

1 shall be allowed one peremptory challenge to each alternate juror.
2 The alternate jurors shall take the proper oath or affirmation and
3 shall be seated near the regular jurors with equal facilities for
4 seeing and hearing the proceedings in the cause, and shall attend
5 at all times upon the trial of the cause in company with the
6 regular jurors. They shall obey all orders and admonitions of the
7 court, and if the regular jurors are ordered to be kept in the
8 custody of an officer during the trial of the cause, the alternate
9 jurors shall also be kept with the other jurors and, except as
10 hereinafter provided, shall be discharged upon the final submission
11 of the cause to the jury. If an information charging a violation
12 of section 28-303 and in which the death penalty is sought contains
13 a notice of aggravation, the alternate jurors shall be retained as
14 provided in section 29-2520. If, before the final submission of
15 the cause a regular juror dies or is discharged, the court shall
16 order the alternate juror, if there is but one, to take his or her
17 place in the jury box. If there are two alternate jurors the court
18 shall select one by lot, who shall then take his or her place in
19 the jury box. After an alternate juror is in the jury box he or
20 she shall be subject to the same rules as a regular juror.

21 Sec. 7. Section 29-2027, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 29-2027. In all trials for murder the jury before whom
24 such trial is had, if they find the prisoner guilty thereof, shall
25 ascertain in their verdict whether it ~~be~~ is murder in the first or
26 second degree, or manslaughter; and if such person ~~be~~ is convicted
27 by confession in open court, the court shall proceed by examination
28 of witnesses in open court, to determine the degree of the crime,

1 and shall pronounce sentence accordingly or as provided in sections
2 29-2519 to 29-2524 and section 13 of this act for murder in the
3 first degree.

4 Sec. 8. Section 29-2204, Revised Statutes Supplement,
5 2002, is amended to read:

6 29-2204. (1) Except when a term of life imprisonment
7 without parole is required by law, in imposing an indeterminate
8 sentence upon an offender the court shall:

9 (a)(i) Until July 1, 1998, fix the minimum and maximum
10 limits of the sentence to be served within the limits provided by
11 law, except that when a maximum limit of life is imposed by the
12 court for a Class IB felony, the minimum limit may be any term of
13 years not less than the statutory mandatory minimum; and

14 (ii) Beginning July 1, 1998:

15 (A) Fix the minimum and maximum limits of the sentence to
16 be served within the limits provided by law for any class of felony
17 other than a Class IV felony, except that when a maximum limit of
18 life is imposed by the court for a Class IB felony, the minimum
19 limit may be any term of years not less than the statutory
20 mandatory minimum. If the criminal offense is a Class IV felony,
21 the court shall fix the minimum and maximum limits of the sentence,
22 but the minimum limit fixed by the court shall not be less than the
23 minimum provided by law nor more than one-third of the maximum term
24 and the maximum limit shall not be greater than the maximum
25 provided by law; or

26 (B) Impose a definite term of years, in which event the
27 maximum term of the sentence shall be the term imposed by the court
28 and the minimum term shall be the minimum sentence provided by law;

1 (b) Advise the offender on the record the time the
2 offender will serve on his or her minimum term before attaining
3 parole eligibility assuming that no good time for which the
4 offender will be eligible is lost; and

5 (c) Advise the offender on the record the time the
6 offender will serve on his or her maximum term before attaining
7 mandatory release assuming that no good time for which the offender
8 will be eligible is lost.

9 If any discrepancy exists between the statement of the
10 minimum limit of the sentence and the statement of parole
11 eligibility or between the statement of the maximum limit of the
12 sentence and the statement of mandatory release, the statements of
13 the minimum limit and the maximum limit shall control the
14 calculation of the offender's term. If the court imposes more than
15 one sentence upon an offender or imposes a sentence upon an
16 offender who is at that time serving another sentence, the court
17 shall state whether the sentences are to be concurrent or
18 consecutive.

19 (2) (a) When the court is of the opinion that imprisonment
20 may be appropriate but desires more detailed information as a basis
21 for determining the sentence to be imposed than has been provided
22 by the presentence report required by section 29-2261, the court
23 shall commit an offender to the Department of Correctional Services
24 for a period not exceeding ninety days. The department shall
25 conduct a complete study of the offender during that time,
26 inquiring into such matters as his or her previous delinquency or
27 criminal experience, social background, capabilities, and mental,
28 emotional, and physical health and the rehabilitative resources or

1 programs which may be available to suit his or her needs. By the
2 expiration of the period of commitment or by the expiration of such
3 additional time as the court shall grant, not exceeding a further
4 period of ninety days, the offender shall be returned to the court
5 for sentencing and the court shall be provided with a written
6 report of the results of the study, including whatever
7 recommendations the department believes will be helpful to a proper
8 resolution of the case. After receiving the report and the
9 recommendations, the court shall proceed to sentence the offender
10 in accordance with subsection (1) of this section. The term of the
11 sentence shall run from the date of original commitment under this
12 subsection.

13 (b) In order to encourage the use of this procedure in
14 appropriate cases, all costs incurred during the period the
15 defendant is held in a state institution under this subsection
16 shall be a responsibility of the state and the county shall be
17 liable only for the cost of delivering the defendant to the
18 institution and the cost of returning him or her to the appropriate
19 court for sentencing or such other disposition as the court may
20 then deem appropriate.

21 (3) Except when a term of life is required by law,
22 whenever the defendant was under eighteen years of age at the time
23 he or she committed the crime for which he or she was convicted,
24 the court may, in its discretion, instead of imposing the penalty
25 provided for the crime, make such disposition of the defendant as
26 the court deems proper under the Nebraska Juvenile Code. Prior to
27 making a disposition which commits the juvenile to the Office of
28 Juvenile Services, the court shall order the juvenile to be

1 evaluated by the office if the juvenile has not had an evaluation
2 within the past twelve months.

3 Sec. 9. Section 29-2261, Revised Statutes Supplement,
4 2002, is amended to read:

5 29-2261. (1) Unless it is impractical to do so, when an
6 offender has been convicted of a felony other than murder in the
7 first degree, the court shall not impose sentence without first
8 ordering a presentence investigation of the offender and according
9 due consideration to a written report of such investigation. When
10 an offender has been convicted of murder in the first degree and
11 (a) a jury renders a verdict finding the existence of one or more
12 aggravating circumstances as provided in section 29-2520 or (b) (i)
13 the information contains a notice of aggravation as provided in
14 section 29-1603 and (ii) the offender waives his or her right to a
15 jury determination of the alleged aggravating circumstances, the
16 court shall not commence the sentencing determination proceeding as
17 provided in section 29-2521 without first ordering a presentence
18 investigation of the offender and according due consideration to a
19 written report of such investigation.

20 (2) A court may order a presentence investigation in any
21 case.

22 (3) The presentence investigation and report shall
23 include, when available, an analysis of the circumstances attending
24 the commission of the crime, the offender's history of delinquency
25 or criminality, physical and mental condition, family situation and
26 background, economic status, education, occupation, and personal
27 habits, and any other matters that the probation officer deems
28 relevant or the court directs to be included. All local and state

1 police agencies and Department of Correctional Services adult
2 correctional facilities shall furnish to the probation officer
3 copies of such criminal records, in any such case referred to the
4 probation officer by the court of proper jurisdiction, as the
5 probation officer shall require without cost to the court or the
6 probation officer.

7 Such investigation shall also include:

8 (a) Any written statements submitted to the county
9 attorney by a victim; and

10 (b) Any written statements submitted to the probation
11 officer by a victim.

12 (4) If there are no written statements submitted to the
13 probation officer, he or she shall certify to the court that:

14 (a) He or she has attempted to contact the victim; and

15 (b) If he or she has contacted the victim, such officer
16 offered to accept the written statements of the victim or to reduce
17 such victim's oral statements to writing.

18 For purposes of subsections (3) and (4) of this section,
19 the term victim shall be as defined in section 29-119.

20 (5) Before imposing sentence, the court may order the
21 offender to submit to psychiatric observation and examination for a
22 period of not exceeding sixty days or such longer period as the
23 court determines to be necessary for that purpose. The offender
24 may be remanded for this purpose to any available clinic or mental
25 hospital, or the court may appoint a qualified psychiatrist to make
26 the examination. The report of the examination shall be submitted
27 to the court.

28 (6) Any presentence report or psychiatric examination

1 shall be privileged and shall not be disclosed directly or
2 indirectly to anyone other than a judge, probation officers to whom
3 an offender's file is duly transferred, the probation administrator
4 or his or her designee, or others entitled by law to receive such
5 information, including personnel and mental health professionals
6 for the Nebraska State Patrol specifically assigned to sex offender
7 registration and community notification for the sole purpose of
8 using such report or examination for assessing risk and for
9 community notification of registered sex offenders. For purposes
10 of this subsection, mental health professional means (a) a
11 practicing physician licensed to practice medicine in this state
12 under the provisions of section 71-102, (b) a practicing
13 psychologist licensed to engage in the practice of psychology in
14 this state as provided in section 71-1,206.14, or (c) a practicing
15 mental health professional licensed or certified in this state as
16 provided in section 71-1,333. The court may permit inspection of
17 the report or examination of parts thereof by the offender or his
18 or her attorney, or other person having a proper interest therein,
19 whenever the court finds it is in the best interest of a particular
20 offender. The court may allow fair opportunity for an offender to
21 provide additional information for the court's consideration.

22 (7) If an offender is sentenced to imprisonment, a copy
23 of the report of any presentence investigation or psychiatric
24 examination shall be transmitted forthwith to the Department of
25 Correctional Services or, when the defendant is committed to the
26 custody of a specific institution, to such institution.

27 (8) Notwithstanding subsection (6) of this section, the
28 Nebraska Commission on Law Enforcement and Criminal Justice under

1 the direction and supervision of the Chief Justice of the Supreme
2 Court shall have access to presentence investigations and reports
3 for the sole purpose of carrying out the study required under
4 subdivision (7) of section 81-1425. The commission shall treat
5 such information as confidential, and nothing identifying any
6 individual shall be released by the commission.

7 Sec. 10. Section 29-2519, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 29-2519. (1) The Legislature hereby finds that it is
10 reasonable and necessary to establish mandatory standards for the
11 imposition of the sentence of death; that the imposition of the
12 death penalty in every instance of the commission of the crimes
13 specified in section 28-303 fails to allow for mitigating factors
14 which may dictate against the penalty of death; and that the
15 rational imposition of the death sentence requires the
16 establishment of specific legislative guidelines to be applied in
17 individual cases by the court. The Legislature therefor determines
18 that the death penalty should be imposed only for the crimes set
19 forth in section 28-303 and, in addition, that it shall only be
20 imposed in those instances when the aggravating circumstances
21 existing in connection with the crime outweigh the mitigating
22 circumstances, as set forth in sections 29-2520 to 29-2524 and
23 section 13 of this act.

24 (2) The Legislature hereby finds and declares that:

25 (a) The decision of the United States Supreme Court in
26 Ring v. Arizona (2002) requires that Nebraska revise its sentencing
27 process in order to ensure that rights of persons accused of murder
28 in the first degree, as required under the Sixth and Fourteenth

1 Amendments of the United States Constitution, are protected;

2 (b) The changes made by this legislative bill are
3 intended to be procedural only in nature and ameliorative of the
4 state's prior procedures for determination of aggravating
5 circumstances in the sentencing process for murder in the first
6 degree;

7 (c) The changes made by this legislative bill are not
8 intended to alter the substantive provisions of sections 28-303 and
9 29-2520 to 29-2524;

10 (d) The aggravating circumstances defined in section
11 29-2523 have been determined by the United States Supreme Court to
12 be "functional equivalents of elements of a greater offense" for
13 purposes of the defendant's Sixth Amendment right, as applied to
14 the states under the Fourteenth Amendment, to a jury determination
15 of such aggravating circumstances, but the aggravating
16 circumstances are not intended to constitute elements of the crime
17 generally unless subsequently so required by the state or federal
18 constitution; and

19 (e) To the extent that such can be applied in accordance
20 with state and federal constitutional requirements, it is the
21 intent of the Legislature that the changes to the murder in the
22 first degree sentencing process made by this legislative bill shall
23 apply to any murder in the first degree sentencing proceeding
24 commencing on or after the effective date of this act.

25 Sec. 11. Section 29-2520, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 29-2520. (1) Whenever any person is found guilty of a
28 violation of section 28-303 and the information contains a notice

1 of aggravation as provided in section 29-1603, the district court
2 shall, as soon as practicable, within seven days fix a date for an
3 aggravation hearing on determination of the sentence to be imposed.
4 ~~Such determination shall be made by: (1) The judge who presided at~~
5 ~~the trial or who accepted the plea of guilty; (2) a panel of three~~
6 ~~judges including the judge who presided or accepted the plea, the~~
7 ~~two additional judges having been designated by the Chief Justice~~
8 ~~of the Supreme Court after receiving a request therefor from the~~
9 ~~presiding judge; or (3) a panel of three district judges named by~~
10 ~~the Chief Justice of the Supreme Court when such Chief Justice has~~
11 ~~determined that the presiding judge is disabled or disqualified~~
12 ~~after receiving a suggestion of such disability or disqualification~~
13 ~~from the clerk of the court in which the finding of guilty was~~
14 ~~entered. to determine the alleged aggravating circumstances. If~~
15 no notice of aggravation has been filed, the district court shall
16 enter a sentence of life imprisonment without parole.

17 (2) Unless the defendant waives his or her right to a
18 jury determination of the alleged aggravating circumstances, such
19 determination shall be made by:

20 (a) The jury which determined the defendant's guilt; or

21 (b) A jury impaneled for purposes of the determination of
22 the alleged aggravating circumstances if:

23 (i) The defendant waived his or her right to a jury at
24 the trial of guilt and either was convicted before a judge or was
25 convicted on a plea of guilty or nolo contendere; or

26 (ii) The jury which determined the defendant's guilt has
27 been discharged.

28 A jury required by subdivision (2)(b) of this section

1 shall be impaneled in the manner provided in sections 29-2004 to
2 29-2010.

3 (3) The defendant may waive his or her right to a jury
4 determination of the alleged aggravating circumstances. The court
5 shall accept the waiver after determining that it is made freely,
6 voluntarily, and knowingly. If the defendant waives his or her
7 right to a jury determination of the alleged aggravating
8 circumstances, such determination shall be made by a panel of
9 judges as a part of the sentencing determination proceeding as
10 provided in section 29-2521.

11 (4) (a) At an aggravation hearing before a jury for the
12 determination of the alleged aggravating circumstances, the state
13 may present evidence as to the existence of the aggravating
14 circumstances alleged in the information. The Nebraska Evidence
15 Rules shall apply at the aggravation hearing.

16 (b) Alternate jurors who would otherwise be discharged
17 upon final submission of the cause to the jury shall be retained
18 during the deliberation of the defendant's guilt but shall not
19 participate in such deliberations. Such alternate jurors shall
20 serve during the aggravation hearing as provided in section 29-2004
21 but shall not participate in the jury's deliberations under this
22 subsection.

23 (c) If the jury serving at the aggravation hearing is the
24 jury which determined the defendant's guilt, the jury may consider
25 evidence received at the trial of guilt for purposes of reaching
26 its verdict as to the existence or nonexistence of aggravating
27 circumstances in addition to the evidence received at the
28 aggravation hearing.

1 (d) After the presentation and receipt of evidence at the
2 aggravation hearing, the state and the defendant or his or her
3 counsel may present arguments before the jury as to the existence
4 or nonexistence of the alleged aggravating circumstances.

5 (e) The court shall instruct the members of the jury as
6 to their duty as jurors, the definitions of the aggravating
7 circumstances alleged in the information, and the state's burden to
8 prove the existence of each aggravating circumstance alleged in the
9 information beyond a reasonable doubt.

10 (f) The jury at the aggravation hearing shall deliberate
11 and return a verdict as to the existence or nonexistence of each
12 alleged aggravating circumstance. Each aggravating circumstance
13 shall be proved beyond a reasonable doubt. Each verdict with
14 respect to each alleged aggravating circumstance shall be
15 unanimous. If the jury is unable to reach a unanimous verdict with
16 respect to an aggravating circumstance, such aggravating
17 circumstance shall not be weighed in the sentencing determination
18 proceeding as provided in section 29-2521.

19 (g) Upon rendering its verdict as to the determination of
20 the aggravating circumstances, the jury shall be discharged.

21 (h) If no aggravating circumstance is found to exist, the
22 court shall enter a sentence of life imprisonment without parole.
23 If one or more aggravating circumstances are found to exist, the
24 court shall convene a panel of three judges to hold a hearing to
25 receive evidence of mitigation and sentence excessiveness or
26 disproportionality as provided in subsection (3) of section
27 29-2521.

28 Sec. 12. Section 29-2521, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-2521. (1) When a person has been found guilty of
3 murder in the first degree and (a) a jury renders a verdict finding
4 the existence of one or more aggravating circumstances as provided
5 in section 29-2520 or (b) (i) the information contains a notice of
6 aggravation as provided in section 29-1603 and (ii) such person
7 waives his or her right to a jury determination of the alleged
8 aggravating circumstances, the sentence of such person shall be
9 determined by:

10 (a) A panel of three judges, including the judge who
11 presided at the trial of guilt or who accepted the plea and two
12 additional active district court judges named at random by the
13 Chief Justice of the Supreme Court. The judge who presided at the
14 trial of guilt or who accepted the plea shall act as the presiding
15 judge for the sentencing determination proceeding under this
16 section; or

17 (b) If the Chief Justice of the Supreme Court has
18 determined that the judge who presided at the trial of guilt or who
19 accepted the plea is disabled or disqualified after receiving a
20 suggestion of such disability or disqualification from the clerk of
21 the court in which the finding of guilty was entered, a panel of
22 three active district court judges named at random by the Chief
23 Justice of the Supreme Court. The Chief Justice of the Supreme
24 Court shall name one member of the panel at random to act as the
25 presiding judge for the sentencing determination proceeding under
26 this section.

27 (2) In the sentencing determination proceeding ~~for~~
28 determination of sentence before a panel of judges when the right

1 to a jury determination of the alleged aggravating circumstances
2 has been waived, the panel shall, as soon as practicable after
3 receipt of the written report resulting from the presentence
4 investigation ordered as provided in section 29-2261, hold a
5 hearing. At such hearing, evidence may be presented as to any
6 matter that the ~~court~~ presiding judge deems relevant to sentence,
7 and shall include matters relating to ~~any~~ ~~of~~ the aggravating
8 circumstances alleged in the information, to any of the ~~or~~
9 mitigating circumstances set forth in section 29-2523, and to
10 sentence excessiveness or disproportionality. The Nebraska
11 Evidence Rules shall apply to evidence relating to aggravating
12 circumstances. Each aggravating circumstance shall be proved
13 beyond a reasonable doubt. Any evidence at the sentencing
14 determination proceeding - Any such evidence which the ~~court~~
15 presiding judge deems to have probative value may be received. The
16 state and the defendant or his or her counsel shall be permitted to
17 present argument for or against sentence of death. The ~~court~~
18 presiding judge shall set forth the general order of procedure at
19 the outset of the ~~sentence~~ sentencing determination proceeding.
20 The panel shall make written findings of fact based upon the trial
21 of guilt and the sentencing determination proceeding, identifying
22 which, if any, of the alleged aggravating circumstances have been
23 proven to exist beyond a reasonable doubt. Each finding of fact
24 with respect to each alleged aggravating circumstance shall be
25 unanimous. If the panel is unable to reach a unanimous finding of
26 fact with respect to an aggravating circumstance, such aggravating
27 circumstance shall not be weighed in the sentencing determination
28 proceeding. After the presentation and receipt of evidence and

1 argument, the panel shall determine an appropriate sentence as
2 provided in section 29-2522.

3 (3) When a jury renders a verdict finding the existence
4 of one or more aggravating circumstances as provided in section
5 29-2520, the panel of judges shall, as soon as practicable after
6 receipt of the written report resulting from the presentence
7 investigation ordered as provided in section 29-2261, hold a
8 hearing to receive evidence of mitigation and sentence
9 excessiveness or disproportionality. Evidence may be presented as
10 to any matter that the presiding judge deems relevant to (a)
11 mitigation, including, but not limited to, the mitigating
12 circumstances set forth in section 29-2523, and (b) sentence
13 excessiveness or disproportionality as provided in subdivision (3)
14 of section 29-2522. Any such evidence which the presiding judge
15 deems to have probative value may be received. The state and the
16 defendant and his or her counsel shall be permitted to present
17 argument for or against sentence of death. The presiding judge
18 shall set forth the general order of procedure at the outset of the
19 sentencing determination proceeding. After the presentation and
20 receipt of evidence and argument, the panel shall determine an
21 appropriate sentence as provided in section 29-2522.

22 Sec. 13. The verdict of a jury as to the existence or
23 nonexistence of the alleged aggravating circumstances or, when the
24 right to a jury determination of the alleged aggravating
25 circumstances has been waived, the determination of a panel of
26 judges with respect thereto, shall not be an appealable order or
27 judgment of the district court, and no appeal may be taken directly
28 from such verdict or determination.

1 Sec. 14. Section 29-2522, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-2522. The panel of judges for the sentencing
4 determination proceeding ~~After hearing all of the evidence and~~
5 ~~arguments in the sentencing proceeding,~~ the judge or judges shall
6 either unanimously fix the sentence at ~~either~~ death or, if the
7 sentence of death was not unanimously agreed upon by the panel, fix
8 the sentence at life imprisonment, ~~but such~~ without parole. Such
9 sentence determination shall be based upon the following
10 considerations:

11 (1) Whether ~~sufficient~~ the aggravating circumstances
12 ~~exist to~~ as determined to exist justify imposition of a sentence of
13 death;

14 (2) Whether sufficient mitigating circumstances exist
15 which approach or exceed the weight given to the aggravating
16 circumstances; or

17 (3) Whether the sentence of death is excessive or
18 disproportionate to the penalty imposed in similar cases,
19 considering both the crime and the defendant.

20 In each case, in which the court imposes the death
21 ~~sentence,~~ the determination of the ~~court~~ panel of judges shall be
22 in writing and ~~shall be supported by written findings of fact based~~
23 ~~upon the records of the trial and the sentencing proceeding,~~ and
24 ~~referring~~ refer to the aggravating and mitigating circumstances
25 involved weighed in its the determination of the panel.

26 If an order is entered sentencing the defendant to death,
27 a date for execution shall not be fixed until after the conclusion
28 of the appeal provided for by section 29-2525.

1 Sec. 15. Section 29-2523, Revised Statutes Supplement,
2 2002, is amended to read:

3 29-2523. The aggravating and mitigating circumstances
4 referred to in sections ~~29-2521 and 29-2522~~ 29-2519 to 29-2524 and
5 section 13 of this act shall be as follows:

6 (1) Aggravating Circumstances:

7 (a) The offender was previously convicted of another
8 murder or a crime involving the use or threat of violence to the
9 person, or has a substantial prior history of serious assaultive or
10 terrorizing criminal activity;

11 (b) The murder was committed in an effort to conceal the
12 commission of a crime, or to conceal the identity of the
13 perpetrator of such crime;

14 (c) The murder was committed for hire, or for pecuniary
15 gain, or the defendant hired another to commit the murder for the
16 defendant;

17 (d) The murder was especially heinous, atrocious, cruel,
18 or manifested exceptional depravity by ordinary standards of
19 morality and intelligence;

20 (e) At the time the murder was committed, the offender
21 also committed another murder;

22 (f) The offender knowingly created a great risk of death
23 to at least several persons;

24 (g) The victim was a public servant having lawful custody
25 of the offender or another in the lawful performance of his or her
26 official duties and the offender knew or should have known that the
27 victim was a public servant performing his or her official duties;

28 (h) The murder was committed knowingly to disrupt or

1 hinder the lawful exercise of any governmental function or the
2 enforcement of the laws; or

3 (i) The victim was a law enforcement officer engaged in
4 the lawful performance of his or her official duties as a law
5 enforcement officer and the offender knew or reasonably should have
6 known that the victim was a law enforcement officer.

7 The facts upon which the applicability of an aggravating
8 circumstance depends must be proved beyond a reasonable doubt.

9 (2) Mitigating Circumstances:

10 (a) The offender has no significant history of prior
11 criminal activity;

12 (b) The offender acted under unusual pressures or
13 influences or under the domination of another person;

14 (c) The crime was committed while the offender was under
15 the influence of extreme mental or emotional disturbance;

16 (d) The age of the defendant at the time of the crime;

17 (e) The offender was an accomplice in the crime committed
18 by another person and his or her participation was relatively
19 minor;

20 (f) The victim was a participant in the defendant's
21 conduct or consented to the act; or

22 (g) At the time of the crime, the capacity of the
23 defendant to appreciate the wrongfulness of his or her conduct or
24 to conform his or her conduct to the requirements of law was
25 impaired as a result of mental illness, mental defect, or
26 intoxication.

27 Sec. 16. Section 29-2524, Reissue Revised Statutes of
28 Nebraska, is amended to read:

1 29-2524. Nothing in sections 25-1140.09, 28-303, 28-313,
2 and 29-2519 to 29-2546 and section 13 of this act shall be in any
3 way deemed to repeal or limit existing procedures for automatic
4 review of capital cases, nor shall they in any way limit the right
5 of the Supreme Court to reduce a sentence of death to a sentence of
6 life imprisonment without parole in accordance with the provisions
7 of section 29-2308, nor shall they limit the right of the Board of
8 Pardons to commute any sentence of death to a sentence of life
9 imprisonment without parole.

10 Sec. 17. Section 83-1,105.01, Reissue Revised Statutes
11 of Nebraska, is amended to read:

12 83-1,105.01. Except when a term of life imprisonment
13 without parole is required by law, in imposing an indeterminate
14 sentence upon an offender the court shall:

15 (1) Fix the minimum and maximum limits of the sentence to
16 be served within the limits provided by law for any class of felony
17 other than a Class IV felony, except that when a maximum limit of
18 life is imposed by the court for a Class IB felony, the minimum
19 limit may be any term of years not less than the statutory
20 mandatory minimum. If the criminal offense is a Class IV felony,
21 the court shall fix the minimum and maximum limits of the sentence,
22 but the minimum limit fixed by the court shall not be less than the
23 minimum provided by law nor more than one-third of the maximum term
24 and the maximum limit shall not be greater than the maximum
25 provided by law;

26 (2) Impose a definite term of years, in which event the
27 maximum term of the sentence shall be the term imposed by the court
28 and the minimum term shall be the minimum sentence provided by law;

1 or

2 (3) (a) When the court is of the opinion that imprisonment
3 may be appropriate but desires more detailed information as a basis
4 for determining the sentence to be imposed than has been provided
5 by the presentence report required by section 29-2261, the court
6 shall commit an offender to the Department of Correctional Services
7 for a period not exceeding ninety days. The department shall
8 conduct a complete study of the offender during that time,
9 inquiring into such matters as his or her previous delinquency or
10 criminal experience, social background, capabilities, and mental,
11 emotional, and physical health and the rehabilitative resources or
12 programs which may be available to suit his or her needs. By the
13 expiration of the period of commitment or by the expiration of such
14 additional time as the court shall grant, not exceeding a further
15 period of ninety days, the offender shall be returned to the court
16 for sentencing and the court shall be provided with a written
17 report of the results of the study, including whatever
18 recommendations the department believes will be helpful to a proper
19 resolution of the case. After receiving the report and the
20 recommendations, the court shall proceed to sentence the offender
21 in accordance with any applicable provision of law. The term of
22 the sentence shall run from the date of original commitment under
23 this subdivision.

24 (b) In order to encourage the use of this procedure in
25 appropriate cases, all costs incurred during the period the
26 offender is held in a state institution under this subdivision
27 shall be the responsibility of the state and the county shall be
28 liable only for the cost of delivering the offender to the

1 institution and the cost of returning him or her to the appropriate
2 court for sentencing or such other disposition as the court may
3 then deem appropriate.

4 Sec. 18. If any section in this act or any part of any
5 section is declared invalid or unconstitutional, the declaration
6 shall not affect the validity or constitutionality of the remaining
7 portions.

8 Sec. 19. Original sections 28-303, 29-1602, 29-1603,
9 29-2027, 29-2519, 29-2520, 29-2521, 29-2522, 29-2524, and
10 83-1,105.01, Reissue Revised Statutes of Nebraska, and sections
11 28-105, 28-105.01, 29-2004, 29-2204, 29-2261, and 29-2523, Revised
12 Statutes Supplement, 2002, are repealed.

13 Sec. 20. Since an emergency exists, this act takes
14 effect when passed and approved according to law.